SI AH FATT v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C.J., Taylor and Spenser-Wilkinson, JJ.) June 19, 1950]

[F.M. — Criminal Appeal No. 25 of 1950]

Emergency Rgulations, 1948, Regulation 5(1) — Mens rea — Knowledge is essential ingredient of offence under Regulation 5(1).

The facts are that the appellant lived in a hut at the place stated in the charge. On the day in question the police raided that hut. At the time of the raid the appellant was inside the hut holding a bowl of food and another Chinese was standing in the doorway of the hut. On the approach of the police that other Chinese started to run away. He failed to stop when called upon and was shot and killed by the police. The police searched his body and found a .25 Mauser pistol in his right hand trouser pocket. The appellant was arrested. The pistol was so small and compact size that it could be kept in a side trouser pocket without attracting any attention to its presence there. Nothing incriminating was found in the hut and the evidence indicated that the meal which had been prepared was more probably for one person than for two. On these facts the appellant was convicted under Regulation 5(1) of the Emergency Regulations, 1948, and was sentenced to five years' rigorous imprisonment. It was contended on behalf of the appellant that the conviction cannot stand because the prosecution failed to prove circumstances showing that the appellant knew or must have known that the other Chinese was carrying a .25 Mauser pistol. On behalf of the Public Prosecutor it was argued that, on a proper construction of Regulation 5(1), all that the prosecution need do is to prove (a) that the appellant was in company with the other Chinese who was armed, and (b) that there are circumstances which raise a reasonable presumption that the appellant has recently acted with that other Chinese in a manner prejudicial to public safety.

Held, (1) that it was essential for the prosecution to prove that the appellant knew that the armed man was, in fact, armed; and (2) that knowledge is an ingredient of Regulation 5(1).

Cases referred to :—

(1) *Sherras v. De Rutzen* (1895) 1 Q.B. 918.

(2) *Sambasivam v. Public Prosecutor* (1950) M.L.J. 145.

CRIMINAL APPEAL.

P. Hall for the appellant.

W. M. McCall for the respondent.

The judgment of the Court was delivered by :—

Willan, C. J. : — In this case the appellant was convicted on the following charge and sentenced to five years' rigorous imprisonment :—

"That you at or about 6.30 p.m. on the 8th of December, 1949, at or near the 14th milestone, Machap, in the area of Bukit Nanas, in the Settlement of Malacca, were found in the company of another person who was carrying an arm, to wit a Mauser pistol, in contravention of the provisions of Regulation 4 of the Emergency Regulations, 1948, in circumstances which raised a reasonable presumption that you had recently acted with such other person in a manner prejudicial to the public safety, and thereby committed an offence punishable under Regulation 5(1) of the Emergency Regulations, 1948".

Regulation 5(1) reads :—

"Any person who consorts with or is found in the company of another person who is carrying or has in his possession arms or explosives in contravention of the provisions of Regulation 4 of these Regulations, in circumstances which raise a reasonable presumption that he intends to or is about to act with, or has recently acted with, such other person in a manner prejudicial to public safety or the maintenance of public order, shall be guilty of an offence against these Regulations and shall be liable to be punished with death, or with penal servitude for life and whipping."

The facts are that the appellant lived in a hut at the place stated in the charge. On the day in question the police raided that hut. At the time of the raid the appellant was inside the hut holding a bowl of food and another Chinese was standing in the doorway of the hut. On the approach of the police that other Chinese started to run away. He failed to stop when called upon and was shot and killed by the police. The police searched his body and found a .25 Mauser pistol in his right hand trouser pocket. The appellant was arrested.

We have examined the pistol and found it to be of so small and compact size that it could be kept in a side trouser pocket without attracting any attention to its presence there.

Nothing incriminating was found in the hut and the evidence indicates that the meal which had been prepared was more probably for one person than for two.

On these facts the appellant was convicted and sentenced as stated.

In his summing-up to the jury the learned trial Judge said, *inter alia* :—

"The charge states — 'were found in the company of another person who was carrying an arm, to wit a Mauser pistol, in contravention of the provisions of Regulation 4 of the Emergency Regulations, 1948, in circumstances which raised a reasonable presumption that you had recently acted with such other person in a manner prejudicial to the public safety'. I will take the last point first — 'acted with such other person in a manner prejudicial to the public safety'. Well, the condition of things in this country is such that if a man carrying unauthorised arms goes to any house and takes shelter there, that alone raises a strong presumption that the owner is acting in a manner prejudicial to public safety for he is sheltering the man and giving him cover. But you must be satisfied that the man who was shot had that (indicating the exhibit) pistol, and if you are not so satisfied, the only conclusion is that the two European witnesses are liars. Both said that the pistol was found in the man's pocket and it was identified in Court before you today.

Now, the next point is that the accused is charged with being 'found in the company of'. There is no difficulty about those words at all; everyone knows what 'in the company of' means. It means 'being with', 'together with', and the only point, the only difficult point as I see it, is, not what the words mean, but on the facts of the case."

Mr. Hall, for the appellant, argued that the conviction cannot stand because the prosecution failed

to prove circumstances showing that the appellant knew or must have known that the other Chinese was carrying a .25 Mauser pistol.

Mr. McCall, for the Public Prosecutor, argued that, on a proper construction of Regulation 5(1), all that the prosecution need do is to prove (a) that the appellant was in company with the other Chinese who was armed, and (b) that there are circumstances which raise a reasonable presumption that the appellant had recently acted with that other Chinese in a manner prejudicial to public safety, but that it is not necessary for the prosecution to prove that the appellant knew or must have known that the other Chinese was armed. In short, his argument was that once the circumstances raising the reasonable presumption are shown, the appellant acted at his peril in being in the company of another Chinese who, as it turned out subsequently, was in fact armed.

In *Sherras v. De Rutzen*[1], Wright J., at page 921 said:—

"There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence. but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered."

Later in his judgment, Wright J. classified the exceptions to that cardinal principle of criminal law as follows:—

(a) Acts which are not criminal in any real sense, but are acts which in the public interest are prohibited under penalty — e.g. sale of adulterated food.

(b) Public nuisances.

(c) Cases in which, although the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right e.g. unconscious dramatic piracy.

The present case is not within class (a), (b) or (c), and therefore, unless it can be established that the presumption that *mens rea* is an essential ingredient of an offence under Regulation 5(1) of the Emergency Regulations, 1948, is displaced by the words or subject-matter of the Regulation, this appeal must succeed.

In deciding whether on a proper construction of Regulation 5(1) it was essential for the prosecution to prove that the appellant knew that the armed man was, in fact, armed, we take into account the words and subject-matter of Regulation 5, and it is also relevant to consider Regulation 4 on which there has been a recent decision of the Privy Council.

In *Sambasivam v. Public Prosecutor*[2] Their Lordships of the Privy Council held that although Regulation 4 says nothing about any special intent and that special intent is not an element of the offence under that Regulation, yet, when a person is charged under that Regulation with carrying a firearm, the prosecution must prove that he was carrying such firearm to his knowledge.

Sub-regulations (1A), (2) and (3) of Regulation 5 read:—

"(1A) Any person who consorts with, or is found in the company of, another person who is carrying, or has in his possession, arms or explosives in contravention of the provisions of Regulation 4 of these Regulations, in circumstances which raise a reasonable presumption that he knew that such other person had in his possession such arms or explosives, shall be guilty of an offence against these Regulations and shall, on conviction therefor, be liable to imprisonment for a term not exceeding ten years.

(2) Where, in any prosecution for an offence under this regulation, it is established to the satisfaction of the Court that the accused person was consorting with or in the company of any person carrying or having possession of any fire-arm or explosive, it shall be presumed, until the contrary is proved, that such last mentioned person was carrying or in possession of such fire-arm or explosive in contravention of the provisions of Regulation 4 of these Regulations.

(3) In any prosecution for an offence under this Regulation the fact that the accused person was not at the time of his arrest in possession of an identity card issued to him under the provisions of the Emergency (Registration Areas), Regulations, 1948, shall be admissible in evidence and may, unless such accused person shall prove that he was at the material time registered under the provisions of such Regulations, be deemed by the Court to be a circumstance raising a presumption that the accused intended to or was about to act with or had recently acted with the person with whom he was consorting or in whose company he was found in a manner prejudicial to public safety or the maintenance of public order."

When the Emergency Regulations, 1948, were first promulgated, Regulation 5 consisted of sub-regulation (1) only; sub-regulations (1A), (2) and (3) were added later.

It is significant that in sub-regulation (1A) of Regulation 5 the prosecution must prove circumstances which raise a reasonable presumption that a person accused under that sub-regulation knew that the person in whose company he was found was armed or possessed firearm. That offence is punishable with a maximum sentence of ten years' imprisonment and, in our view, being included in the same Regulation as sub-regulation (1) it must have been intended to be a minor offence to that contained in sub-regulation (1) for which the maximum punishment is death. Therefore, on a prosecution under sub-regulation (1), a conviction could be had under sub-regulation (1A) in a case where the prosecution, having proved that the accused knew the other person was armed, failed to prove that

the accused had acted in a manner prejudicial to public safety or to the maintenance of public order. For this to be done it is necessary for knowledge to be an ingredient of the offence under sub-regulation (1).

As regards sub-regulation (3), if a person accused under sub-regulation (1) is not in possession of an identity card when arrested, that, if we were to accede to Mr. McCall's argument, might be sufficient to convict him, even though he had not the slightest idea that the person in whose company he was had a firearm in his possession (which might be in his house in another place miles away) or concealed on his person.

If the legislature intended the law to be as envisaged by Mr. McCall, then, in our opinion, they have failed to use language in Regulation 5(1) to make their intention clear not merely to the general public, but even to the Judges whose duty it is to interpret the law.

From a perusal of previous decided cases we find that the High Court has consistently acted on the principle that knowledge is an ingredient of Regulation 5(1). In our view that is correct and we so decide.

We wish to add that on the particular facts of this case the prosecution not only failed to prove that the appellant knew the other Chinese to be armed but also failed to prove any circumstances showing that the appellant had acted with that other Chinese in a manner prejudicial to public safety.

For these reasons this appeal is allowed and the conviction and sentence quashed.

Appeal allowed.

PUBLIC PROSECUTOR v. CHUA YEOH PAN.

[App. Crim. Juris. (Pretheroe, J.) May 9, 1950]

[Malacca — Criminal Appeal No. 4 of 1950]

Motor Vehicles (Construction and Use) Regulations, 1948 — Whether these regulations are ultra vires the powers of the Commissioner of Road Transport — Road Transport Proclamation (No. 17 of 1945).

The respondent in this case was charged with "being the owner of motor lorry No. S. 2852 did use the said vehicle on a public road . . . ." contrary to regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948. The respondent was the registered owner of the vehicle concerned but at the time of the alleged offence the lorry was being driven by and was in charge of his servant, the driver, and respondent was not present at the time. At the trial the respondent was found not guilty and was acquitted. The Public Prosecutor appealed against this acquittal. At the hearing of the appeal and in reply to the Deputy Public Prosecutor, Mr. Sault submitted firstly that the whole of the Motor Vehicles (Construction and Use) Regulations, 1948, were ultra vires the powers of the Commissioner of Road Transport and secondly that if his first submission failed, then regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948, was ultra vires the powers of the Commissioner of Road Transport. By agreement of counsel, these two submissions were treated as preliminary objections.

Held, (1) that the Commissioner of Road Transport had power to make the regulations under section 5 of the Road Transport Proclamation, 1945; and (2) that regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948, was not ultra vires the regulation-making powers of the Commissioner of Road Transport.

Case referred to :—

(1) *Cole v. Young* (1938) 4 All. E.R. 39.

CRIMINAL APPEAL from Magistrate's Court.

H. Shepherd for the appellant.

W. H. Sault for the respondent.

Cur. Adv. Vult.

Pretheroe, J. : — The respondent was charged with "being the owner of motor lorry No. S. 2852 did use the said vehicle on a public road . . ." contrary to regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948. The respondent is the registered owner of the vehicle concerned but at the time of the alleged offence the lorry was being driven by, and was in the charge of, his servant, the driver and respondent was not present at the time. The Magistrate who heard the case found respondent not guilty of the offence charged and acquitted and discharged him. Against this acquittal the Public Prosecutor appealed on three grounds.

At the hearing the Deputy Public Prosecutor, Mr. Shepherd, informed the Court that he was abandoning the second ground of appeal. He then addressed the Court on the two remaining grounds.

In reply, Mr. Sault for the respondent, announced that his first submission was that the whole of the Motor Vehicles (Construction and Use) Regulations, 1948, were *ultra vires* the powers of the Commissioner of Road Transport (hereinafter referred to as "the Commissioner") and his second submission was that, if his first submission failed, then regulation 98 of the Motor Vehicles (Construction and Use) Regulations, 1948, was *ultra vires* the powers of the Commissioner.

By agreement of Counsel these two submissions were treated as preliminary objections as, if either was successful, the appeal would at once collapse.

In support of his contention that the Motor Vehicles (Construction and Use) Regulations, 1948, were *ultra vires* the powers of the Commissioner Mr. Sault pointed out that the Regulations were made by the Commissioner "in exercise of the powers conferred